

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VAL VERDE UNIFIED SCHOOL
DISTRICT, SAN DIEGO UNIFIED
SCHOOL DISTRICT, AND MORENO
VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013100148

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND DISMISSAL OF
MORENO VALLEY UNIFIED
SCHOOL DISTRICT

On September 30, 2013 Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request¹ (complaint) naming the Val Verde Unified School District (VV), the San Diego Unified School District (SDUSD), and the Moreno Valley Unified School District (MV) as respondents.

On October 10, 2013, VV and MV filed a response to Student's complaint. In the response, VV admits that it provided educational services to Student from October 1, 2011 to September 30, 2013, and that Student became enrolled at MV on October 1, 2013.

On October 11, 2013, SDUSD filed with OAH a Notice of Insufficiency (NOI) as to Student's complaint. SDUSD contends that the complaint fails to allege any facts relating to it and that Student was not a student of SDUSD during the two year period prior to filing the complaint. On October 14, 2013, OAH, by the undersigned, found that the complaint was not sufficient as to SDUSD. Also, OAH, on the motion of the ALJ, dismissed SDUSD as a party as Student had not been enrolled in SDUSD during all times material in the case.

On October 15, 2013, VV and MV filed a Notice of Insufficiency (NOI) as to Student's complaint. VV and MV contend that the complaint is not sufficient. MV also requests that it be dismissed as a party as Student did not become enrolled in MV until October 1, 2013, a date after the filing of the complaint.

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

DISCUSSION

Student's complaint alleges seven claims or issues in the complaint, which are all insufficiently pled as discussed below. Student has failed to allege any facts in support of any of the seven claims.

In her first claim, Student alleges that she was the victim of molestation at "CHHS." OAH has jurisdiction only in matters "relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) Student has not averred when the alleged molestation occurred or how Student being molested relates to the identification, assessment, or educational placement or in any other way amount to a denial of a free appropriate public education (FAPE).

In her second claim, Student contends that she has been the victim of bullying. Again, Student fails to aver any facts to support her claim and how it relates to a denial of FAPE. Student must plead facts as to when the alleged bullying occurred and in what manner did the District's actions or failure to act amount to a denial of FAPE.

In claim three, Student alleges that her equipment is not "modern." Student has failed to allege any facts to describe the problem such as the equipment in question or how this denied Student a FAPE.

In claim four, Student alleges that she is an auditory learner and needs to have her records reviewed. Student has failed to allege any facts and how Student is being denied a FAPE.

In claim five, Student avers she is not mentally retarded but instead suffers from cerebral palsy. Student appears to be challenging the eligibility category that Student's Individualized Education Program (IEP) team has found Student eligible for special education and related services. Student needs to plead facts as to the IEP in issue (their date) and what eligibility categories Student qualified under. Student also must allege how this has denied Student a FAPE or loss of educational benefits.

In claim six, Student alleges that Student has failed to meet her number one goal-washing hands. Student needs to allege facts to support this claim including identifying which IEP is being referred to.

In claim seven, Student alleges that Student should have been taught to utilize sign language. Student has failed to allege any facts to demonstrate how learning sign language would meet Student's unique needs.

Attached to the NOI/Motion to Dismiss are the declarations of Troy Knudwig, special education director of VV, and Pamela Bender, executive director of SELPA Services at MV. Both declarations have attached various documents to corroborate the declarants' contention that Student ceased being enrolled at VV on September 30, 2013, and was then enrolled at MV on October 1, 2013. Thus, it is apparent that MV should not be a party as Student did not become enrolled in MV at the time that the complaint was filed with OAH. Accordingly, on the motion of the ALJ, MV is dismissed as a party.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹
3. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.
6. On the motion of the ALJ, Moreno Valley Unified School District is dismissed as a party. Moreno Valley Unified School District's motion to dismiss is denied as moot.

8 Ed. Code, § 56505.

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

Dated: October 17, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings